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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JOEY H. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MICHELLE R.,

Defendant and Appellant.

D062210

(Super. Ct. No. EJ003123A,B)

APPEAL from orders of the Superior Court of San Diego County, Gary M. Bubis,
Judge. Affirmed.

Michelle R. appeals juvenile court orders suspending her right to make educational decisions on behalf of her minor daughters, Joey H. and Kylie H. (together, the minors) after the court declared the minors dependents and removed them from Michelle's custody. Michelle contends that she was willing and able to make decisions for the

minors' education, and that her guidance would be in the minors' best interests. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

Michelle has a history of substance abuse and felony convictions. Her history with child protective services dates to 1998 and includes 14 prior referrals. In 2009, the minors were taken into protective custody based on allegations of general neglect and drug use by the parents. Michelle successfully participated in family reunification services, and the court terminated jurisdiction in April 2011. Less than a year later, four-year-old Joey and three-year-old Kylie were again removed from their home when Michelle was found to be under the influence of a controlled substance. Michelle admitted that she had recently used methamphetamine, marijuana and alcohol. The home contained numerous dangerous items that were accessible to the minors, including methamphetamine, pipes, pills, razors, a butane torch and a large knife. The minors tested presumptively positive for drugs. Michelle admitted that she has some mental health issues.

The San Diego County Health and Human Services Agency (Agency) filed petitions in the juvenile court under Welfare and Institutions Code¹ section 300, subdivision (b), alleging that the minors were at substantial risk of harm because their home was unsafe and Michelle had a history of substance abuse. The court detained the minors in out-of-home care.

¹ Statutory references are to the Welfare and Institutions Code.

Michelle was not present at the jurisdiction and disposition hearing, even though she had received notice and was ordered to return for that hearing. After considering the evidence and arguments of counsel, the court sustained the allegations of the petitions, declared the minors dependents, removed them from parental custody, placed them with a non-relative extended family member and ordered the parents to participate in reunification services. Noting that the parents were not present, the court suspended their rights to make educational decisions for the minors. However, the court stated that it would be willing to restore those rights if the parents came forward and began participating in reunification services.

DISCUSSION

A

Parents have a constitutionally protected right to control their children's education. (*Troxel v. Granville* (2000) 530 U.S. 57, 65; *In re R.W.* (2009) 172 Cal.App.4th 1268, 1276.) However, when a child has been declared a dependent under section 300, the court may limit that control. (§ 361; Cal. Rules of Court, rule 5.650(a).) The court has broad discretion to make reasonable orders for the care and support of a child, but any limitations on a parent's control over educational decisions under section 361 must not exceed "those necessary to protect the child." (§ 361; *Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1087, fn. 12.)

"If the court specifically limits the right of the parent . . . to make educational . . . decisions for the child . . . the court shall at the same time appoint a responsible adult to make educational . . . decisions" (§ 361, subd. (a).) However,

section 361, subdivision (a) does not condition the court's ability to appoint an educational representative on the parent's inability or unwillingness to make educational decisions. Instead, a parent's inability and unwillingness to make educational decisions are factors that are relevant to a determination of whether a limitation is "necessary to protect the child." (§ 361, subd. (a).) Indeed, "[a]ll educational decisions must be based on the best interests of the child." (*In re Samuel G.* (2009) 174 Cal.App.4th 502, 510.)

We review the court's order limiting a parent's educational rights for abuse of discretion. (*In re R.W., supra*, 172 Cal.App.4th at p. 1277.) A proper exercise of discretion is "'neither arbitrary nor capricious, but is an impartial discretion, guided and controlled by fixed legal principles, to be exercised in conformity with the spirit of the law, and in a manner to subserve and not to impede or defeat the ends of substantial justice.'" [Citation.]" (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977.) Exercises of discretion must be "'grounded in reasoned judgment and guided by legal principles and legal policies appropriate to the particular matter at issue.'" [Citation.]" (*Ibid.*) Thus, although the abuse of discretion standard is deferential, "it is not empty." (*People v. Williams* (1998) 17 Cal.4th 148, 162.) The standard "asks in substance whether the ruling in question 'falls outside the bounds of reason' under the applicable law and the relevant facts. [Citations.]" (*Ibid.*)

B

The evidence showed that Michelle was unable to protect the minors or make any healthy decisions on their behalf. Despite frequent and ongoing interventions by Agency and law enforcement, Michelle continued to place the minors at risk by exposing them to

her substance abuse. Following her most recent relapse, she had not enrolled in drug treatment or any other services. Michelle admittedly was unstable, had mental health issues, and admitted that she needed help for her substance abuse problem. She told the social worker that she was not the best mom for the minors all the time, and said that she had considered relinquishing them for adoption because she had made "some stupid choices" and her "thinking is crazy." She also said that she suffered from posttraumatic stress disorder, and either bipolar disorder or borderline personality disorder. Michelle later claimed that she never had a substance abuse problem that warranted removing the minors from her home, and maintained that she is the best person to care for the minors. Under these circumstances, the court could reasonably find that Michelle was unable to make educational decisions in the minors' best interests and thus, that an order suspending her education rights was necessary to protect the minors.

Significantly, Michelle failed to appear in court for the jurisdiction and disposition hearing and her whereabouts at that time were unknown. The court could not know if or when Michelle would be available in the event that educational decisions needed to be made for the minors. Under these circumstances, the court did not abuse its discretion by suspending Michelle's education rights until she came forward and started to participate in reunification services.

DISPOSITION

The orders are affirmed.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.